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Before the
Federal Communications Commission
Washington, D C 20554

In the Matter of

Section 63 71 Application of KMC Telecom V,
Inc and KMC Telecom of Virginia, Inc for
Authority to Discontinue Domestic
Telecommunications Services

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WC Docket No 05-309
Comp Pol File No 729

ORDER**Adopted:** December 28, 2005**Released:** December 28, 2005

By the Chief, Wireline Competition Bureau

I INTRODUCTION

1 In this Order, we grant the application of KMC Telecom V, Inc (KMC Telecom V) and KMC Telecom of Virginia, Inc (KMC Telecom of VA) (collectively, KMC or Applicants), to discontinue the provision of certain U S domestic telecommunications services pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),¹ and section 63 71 of the Federal Communications Commission's (Commission) rules.² As explained in further detail below, in order to allow KMC to discontinue services for which it states it no longer has funding while facilitating a reasonable transition of KMC's customers to alternative services, we grant KMC authority to discontinue service consistent with its filed representation that it will defer its planned discontinuance date from December 5, 2005 and continue to provide service to the all of its customers through January 2, 2006

II BACKGROUND

2 On October 27, 2005, KMC filed an application with the Commission requesting authority to the extent necessary, under section 214 of the Act and section 63 71 of the Commission's rules, to discontinue the provision of certain domestic telecommunications services in thirty-nine states Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Specifically, KMC seeks authority to discontinue enhanced origination service, enhanced termination service, dial access service and PRI services in the above-mentioned states. KMC specifies that its enhanced origination service involves the provisioning of telephone numbers to customers in order to enable them to complete calls to their enhanced services and/or voice over Internet Protocol (VoIP) end users, and that KMC's enhanced termination service enables the hand-off of VoIP and/or enhanced services calls, generated by the customers' end users, to KMC's network. KMC further clarifies that its dial access service is an end-to-end service enabling customers to outsource their dial-up network management to KMC, and

¹ 47 U.S.C. § 214(a)

² 47 C.F.R. § 63.71

that its PRI services include both 1-way and 2-way circuits. KMC represents that KMC Telecom V provides these services in all of the above-mentioned states, and KMC Telecom of VA provides these services in Virginia.³ KMC states that it does not have funding sufficient to pay its underlying network providers, and that it therefore must discontinue service to its customers in the affected states. KMC indicates that there are a total of approximately twenty-four (24) customers affected by its proposed discontinuance of service, and that they are all carrier customers. In its application, KMC proposes to discontinue its provision of services as soon as the necessary regulatory approvals are obtained. KMC represents that it provided all affected customers with written notification of its planned discontinuance by overnight delivery on October 26, 2005. KMC asserts that all of these customers were also notified by telephone on or about October 14, 2005.

3 By Public Notice issued November 4, 2005, the Commission announced that, in accordance with section 63.71(c), KMC's application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified KMC that the grant would not be automatically effective.⁴ Accordingly, the Commission stated that pursuant to section 63.71(c), and absent further Commission action, KMC could not terminate service to the customers affected by the application until December 5, 2005. The Commission received four comments in opposition to KMC's proposed discontinuance.⁵ These commenters, including US LEC and Vonage, primarily object to KMC's proposed discontinuance on the grounds that they need additional time beyond December 5, 2005 to fully transition to alternative services.⁶ On November 28, 2005, KMC filed a reply stating that it does not agree

³ KMC states that KMC Telecom V and KMC Telecom of VA are wholly owned subsidiaries of KMC Telecom Holdings, Inc. KMC also asserts that it is non-dominant with respect to the services it seeks to discontinue.

⁴ *Comments Invited on Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 05-309, Comp. Pol. File No. 729, DA 05-2927 (rel. Nov. 4, 2005).

⁵ See Response in Opposition of Grande Communications Networks, Inc. (Grande Communications Comments), Opposition of Insight Midwest Holdings, LLC (Insight Comments), US LEC Acquisition Co. (US LEC Comments), Vonage Comments.

⁶ See US LEC Comments at 2-3 (claiming that US LEC has not been able to receive Firm Order Commitment (FOC) dates for alternative services that will allow for installation and full operation by December 5, 2005, and seeking an extension for an additional 30 days at the most, until January 6, 2006), Vonage Comments at 2 (claiming that identifying and following through with alternative sources in markets where they do not have a current partner could require up to and beyond 90 to 120 business days, and requesting a total transition period of at least 120 days). In its original comments, Grande sought an extension until January 2, 2006 claiming that no alternative service had been determined to be available within the time frame at any cost for certain routes served by KMC. Grande Communications Comments at 2. Insight similarly claimed that none of the options it had identified for alternative service could realistically be accomplished by December 5, 2005, and it therefore sought an extension for an additional thirty to sixty days after December 5, 2005 – or until February 2, 2006. Insight Comments at 4. However, on December 2 and December 22, 2005, KMC filed two different joint submissions with Insight and Grande, respectively, whereby KMC amended its application and agreed (1) to help facilitate the transition of Grande/Insight and its telephony customers off of KMC's network and services, and (2) not to discontinue services to Grande/Insight until after midnight January 2, 2006. See Joint Submission of KMC Telecom V, Inc., KMC Telecom of Virginia, Inc., and Insight Midwest Holdings, LLC, WC Docket No. 05-309 (December 2, 2005) (KMC/Insight Joint Filing), Joint Submission of KMC Telecom V, Inc., KMC Telecom of Virginia, Inc., and Grande Communications Networks, Inc., WC Docket No. 05-309 (December 22, 2005) (KMC/Grande Joint Filing). In reliance on KMC's commitments and agreements, both Grande and Insight agreed to withdraw their oppositions to KMC's discontinuance application as amended. See KMC/Grande Joint Filing at 2, KMC/Insight Joint Filing at 2.

that customers would be unable to arrange for replacement services before December 5, 2005, but indicating that KMC has nevertheless taken steps to extend temporarily its operations and extend the date for termination of service to all of its customers by almost thirty days until January 2, 2006, in order to allow for a transition to alternative services.⁷ In consideration of the concerns raised by KMC's customers, the Commission issued a second Public Notice, on December 5, 2005, alerting the public that KMC's application would not be automatically granted and requesting additional public comment.⁸

4 Section 214(a) of the Communications Act, as amended, states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."⁹ The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.¹⁰ As the Commission has stated, "we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,"¹¹ and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.¹²

⁷ See Letter from Melissa S. Conway, Kelley Drye & Warren, LLP, Counsel for KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-309 (November 28, 2005) (KMC Reply). KMC asserts that its voluntary extension will allow customers almost three months of effective notice prior to the proposed discontinuance, and should satisfy Grande Communications, Insight, and US LEC's requests for additional time. KMC Reply at 2. KMC further claims that the request from Vonage for a transition period of at least 120 days is unworkable. *Id.* at 4.

⁸ *Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Services Not Automatically Granted, Further Public Comment Requested*, Public Notice, WC Docket No. 05-309, Comp. Pol. File No. 729, DA 05-3144 (rel. Dec. 5, 2005). In response to this second Public Notice, the Commission received comments from only one KMC customer, Grande Communications, in which Grande reaffirmed its original comments. See Letter from Andrew Kever, Jenkins & Gilchrist, A Professional Corporation, Counsel for Grande Communications Networks, Inc., to the Federal Communications Commission, Attn: Carmell Weathers, WC Docket No. 05-309 (December 12, 2005) (Grande 2nd Comments). As noted above, Grande has since withdrawn its opposition to KMC's application. See *supra* n. 6.

⁹ 47 U.S.C. § 214(a).

¹⁰ See 47 U.S.C. § 201.

¹¹ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 49 (1980) (*Competitive Carrier First Report and Order*).

¹² See 47 C.F.R. § 63.71(a), see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

5 The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.¹³ Balancing the interests of the carrier and the affected user community, the Commission considers a number of factors including (1) the financial impact on the common carrier of continuing to provide the service, (2) the need for the service in general, (3) the need for the particular facilities in question, (4) the existence, availability, and adequacy of alternatives, and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.¹⁴

III DISCUSSION

6 We find that the record supports granting KMC's request to discontinue service in accordance with its filed representations in this proceeding. Specifically, and as stated above, KMC indicates that it is willing to continue providing services to all of its customers, for almost thirty additional days, until January 2, 2006 in order to facilitate their transition to alternative services.¹⁵ On the basis of KMC's representations and considering the five factors identified by the Commission for evaluating applications to discontinue service, we find that the proposed discontinuance as amended should not result in an unreasonable degree of customer hardship, and, therefore, that there should be no adverse effect on the public convenience and necessity.¹⁶

7 Applying the first of the Commission's factors -- the financial impact of continuing to provide the service for the carrier seeking to discontinue -- we note that, in its application, KMC specifically states that although it did not intend to discontinue these services, it currently does not have

¹³ *FCC v RCA Communications Inc*, 73 S Ct 998, 1002 (1953). See also *Verizon Telephone Companies Section 63 71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No 02-237, FCC 03-256 (rel Oct 22, 2003).

¹⁴ *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para 54 (1993) (*Dark Fiber Order*), remanded on other grounds, *Southwestern Bell v FCC*, 19 F 3d 1475 (D C Cir 1994). See *Verizon Telephone Companies Section 63 71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No 02-237, FCC 03-256 (rel Oct 22, 2003).

¹⁵ See KMC Reply at 2, see also para 3, n 7, *supra* (describing KMC's representations regarding continued service to its customers).

¹⁶ We find that this is also consistent with our evaluation in prior orders of discontinuance applications involving similar circumstances. See *In the Matter of Section 63 71 Application of Choice One Communications Inc on Behalf of Certain of its Subsidiaries for Authority to Discontinue Domestic Telecommunications Services*, Order, WC Docket No 05-38, Comp Pol File No 696 (rel Mar 4, 2005) (applying the five factors to find reasonable Choice One's agreement to extend service for 22 days), *In the Matter of Section 63 71 Application of Winstar Communications, LLC and Certain of its Subsidiaries for Authority to Discontinue Domestic Telecommunications Services*, Order, WC Docket No 04-154, Comp Pol File No 680 (rel June 14, 2004) (applying the factors and finding reasonable Winstar's agreement to extend service to most affected customers for approximately 30 days), *In the Matter of Cable & Wireless USA, Inc Application for Authority to Discontinue Certain U S Domestic Telecommunications Services*, Order, Comp Pol File No 663 (rel Dec 12, 2003) (applying the factors to find reasonable Cable & Wireless's agreements with customers to continue providing service for various amounts of time), *In the Matter of Section 63 71 Application of LDMI Telecommunications Inc for Authority to Discontinue the Provision of Domestic Telecommunications Services to Payphone Service Providers in Michigan and Ohio*, Order, Comp Pol File No 648, 18 FCC Rcd 11301 (rel May 30, 2003) (finding reasonable LDMI's agreement to provide service to all commenters for an additional 120 days).

funding sufficient to pay its underlying network providers and thus to maintain the provisioning of these services to its customers¹⁷ Given KMC's claim of immediate financial need, we find that the financial impact of continuing to provide these services for an extended period beyond the planned discontinuance date is burdensome Consistent with our prior decisions, we consider KMC's claims of financial difficulty along with the other factors that are traditionally included in our analysis¹⁸

8 Applying factors two and three -- the need for the services in general and for the particular services in question -- we note that, in its application, KMC states that the affected customers consist of approximately twenty-four carrier customers, and that some of the services it seeks to discontinue facilitate customers' management and completion of VoIP and/or enhanced services calls to and from those customers' end users¹⁹ Commenters in opposition to KMC's discontinuance state that the services they receive from KMC help them to provide services to their own end user customers, but they acknowledge that alternatives are available²⁰

9 Finally, considering factor four -- the existence, availability, and adequacy of alternatives -- we note that KMC asserts that all affected customers have adequate alternative services available to them from competitive and incumbent local exchange carriers²¹ Vonage claims that in the largely rural service areas of Texas, Arkansas and Oklahoma where it utilizes KMC service, there are limited available service alternatives for which an immediate transition could be assigned²² US LEC similarly indicates that it should be able to acquire alternative service but that it will require additional time to complete installation²³ KMC, however, states that it has provided affected customers with the identity of KMC's underlying vendors and circuit information, as well as letters of authorization to enable them to contact directly KMC's underlying vendors and make arrangements to keep critical circuits active for any additional period of time necessary²⁴

10 We find that the record in this proceeding indicates that KMC has provided sufficient notice and assurances that it will maintain service for a reasonable additional period until January 2, 2006, in order to allow the affected customers to migrate to alternative services This extension of time from the originally planned discontinuance date allows customers a period of more than sixty days from the date

¹⁷ See KMC Application at 1

¹⁸ See *supra* para 5

¹⁹ KMC Application at 2-3

²⁰ See US LEC Comments at 1-2 (indicating that US LEC uses KMC's PRI services to provide Internet access to over 2,900 consumers, and acknowledging that substitute service is available), Vonage Comments at 1-2 (stating that Vonage uses KMC services to port and service almost 9,000 of its residential customers located in largely rural areas in Texas, Arkansas and Oklahoma, and asserting that there are limited available service alternatives for which an immediate transition could be assigned)

²¹ KMC Application at 2

²² Vonage Comments at 1

²³ US LEC Comments at 2

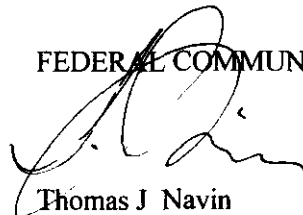
²⁴ KMC Reply at 5 We note that the fifth factor, increased charges for alternative services, was not raised by any remaining commenter in this proceeding

of written notice under our rules to arrange for alternative services from a carrier other than KMC, a non-dominant provider. KMC's efforts to provide information for easier access to its underlying providers should also assure that its customers have access to at least one alternative in all of KMC's affected service areas. We note that the vast majority of KMC's approximately twenty-four customers did not file comments in opposition to KMC's proposed discontinuance, and were apparently able to find alternative services. The commenters that remain in this proceeding are primarily opposed to any premature discontinuance of service by KMC, but KMC's extended discontinuance date closely corresponds with the minimum extension originally requested by US LEC, and we find that Vonage does not sufficiently identify or document the reasons why a transition to alternative service should require ninety to one-hundred and twenty days.²⁵ Also, in our second public notice, we specifically requested comments stating any reason why KMC's revised proposal for a January 2, 2006 discontinuance should not be deemed reasonable, given KMC's stated inability to pay its underlying network providers. We note, however, that we only received one comment in response, in which Grande reiterated its request for an extension until January 2, 2006, and that Grande has since withdrawn its comments in opposition to KMC's application.²⁶ Given the circumstances, we find KMC's request to discontinue service reasonable subject to its representations that it will provide service to its customers for an additional period until January 2, 2006. After balancing all of the relevant factors, we therefore conclude that KMC shall be permitted to discontinue its services in accordance with its filed representations.

IV ORDERING CLAUSE

11 Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to discontinue domestic telecommunications IS GRANTED to the extent declared herein, consistent with KMC's filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION



Thomas J. Navin
Chief

Wireline Competition Bureau

²⁵ See *supra* n 6

²⁶ See *supra* n 8